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11 Attorneys for USACM Liquidating Trust

12 **UNITED STATES BANKRUPTCY COURT**  
13 **DISTRICT OF NEVADA**

14 In re:

15 USA Commercial Mortgage Company,

16 Debtor.

Case No. BK-S-06-10725-LBR

Chapter 11

**DECLARATION OF GEOFFREY L.  
BERMAN IN SUPPORT OF  
OMNIBUS OBJECTION OF USACM  
TRUST TO PROOFS OF CLAIM  
BASED UPON INVESTMENT IN  
THE CABERNET HIGHLANDS  
LOAN**

Hearing Date: August 30, 2011

Hearing Time: 10:30 a.m.

Estimated Time for Hearing: 10 minutes

I, Geoffrey L. Berman, declare under penalty of perjury:

1. I am an adult person competent to testify in court.

2. I make this declaration based upon my personal knowledge, and upon the records USA Commercial Mortgage Company.

3. I am the Trustee of the USACM Liquidating Trust (“USACM Trust”), which is an entity created by the Debtors’ Third Amended Joint Chapter 11 Plan of Reorganization (“Plan”), in the jointly-administered bankruptcy cases, In re USA Commercial Mortgage Company, BK-S-06-10725-LBR, pending in the United States Bankruptcy Court for the District of Nevada.

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1       4. In or around December 2004, USACM circulated an Offer Sheet to  
2 prospective Direct Lenders soliciting funding for an acquisition and development loan to  
3 a borrower identified as “Cabernet at the Highlands, LLC.” A copy of the Offer Sheet is  
4 attached hereto as **Exhibit B** and incorporated by this reference. The total loan amount  
5 proposed was \$3,900,000. The Offer Sheet described the investment as a “Subordinated  
6 Trust Deed Investment” and noted that the investment would be secured by a  
7 subordinated deed of trust on approximately 189 acres located in Reno, Nevada, off of  
8 Highway 395 and Golden Valley Road.

9       5. In February 2005, Borrower made and delivered to various lenders,  
10 including the Direct Lenders identified in **Exhibit A**, a “Promissory Note Secured by  
11 Deed of Trust” (the “Note”) and a Loan Agreement. The Note and Loan Agreement  
12 provided for a loan in the initial principal amount of \$500,000, with the potential for  
13 subsequent increases up to a \$2,600,000 loan. Pursuant to an April 15, 2005 Loan  
14 Modification Agreement, the loan was increased to \$3,900,000. The Note was secured by  
15 a “Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (Third  
16 Position)” (“Deed of Trust”) that was recorded in the official records of Washoe County  
17 Recorder, Nevada on March 1, 2005, with subsequent loan increases secured by  
18 amendments to the Deed of Trust.

19       6. The Note was also supported by a February 17, 2005 Guaranty from DDH  
20 Financial Corp., USA Investment Partners, LLC, Kreg D. Rowe, and Joseph D.  
21 Milanowski.

22       7. The USACM “Loan Summary” dated July 31, 2006 and filed in this case  
23 shows that Borrower was “Performing” on the Note as of July 31, 2006. The USACM  
24 “Loan Summary” dated February 28, 2007 and filed in this case shows that the loan was  
25 in maturity default. *Id.*

26

8. During this bankruptcy case through the transfer of servicing to Compass, USACM treated the Direct Lenders with respect to any interim payments by the borrower in accordance with this Court's orders and the confirmed Plan. The USACM Trust has not been able to determine the ultimate disposition of the Cabernet Highlands Loan or whether the Direct Lenders were repaid on the loan in whole or in part.

9. DDH Financial Corp and its principal, Kreg Rowe, are well known to the Trust as having had an intimate relationship with USACM, Joe Milanowski, Tom Hantges and USA Investment Partners.<sup>1</sup> Mr. Rowe at one time was referenced as an officer of USACM out of its Northern Nevada (Reno) offices.

10. Because the Borrower included USA Investment Partners L.P., an affiliate of USACM, I believe there was the potential for a conflict of interest in the manner in which USACM brokered and serviced this loan.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: July 25, 2011

/s/ Geoffrey L. Berman  
Geoffrey L. Berman

Copy of the foregoing mailed (without Exhibits) by first class postage prepaid U.S. Mail on July 25, 2011 to All investors listed on Exhibit A Attached.

s/ Matt Burns  
Matt Burns, Paralegal

<sup>1</sup> Earlier this year the chapter 11 trustee for USAIP settled her claims against Mr. Rowe and DDH Financial, along with Mr. Rowe's associate Bret Sebert and B&L Investments Inc.